

TESTIMONY OF DR. MICHAEL DJERNES

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In the United States Federal District Court for the District of Idaho

Saint Alphonsus Medical Center-Nampa, Inc., et. al. v. St. Luke's Health System Ltd., et. al.

Case No. 1:12-cv-00560-BLW

Page Range: 7:13-7:25

7:13 BY MR. ETtinger
7:14 Q. Doctor, could you state your full name
7:15 for the record, please.
7:16 A. Michael Roger Djernes.
7:17 Q. And what's your occupation?
7:18 A. Physician.
7:19 Q. And where do you work?
7:20 A. Saltzer Medical Group in Nampa, Idaho.
7:21 Q. How long have you worked at Saltzer?
7:22 A. 22 -- this is my 23rd year with
7:23 Saltzer.
7:24 Q. Okay. And what's your specialty?
7:25 A. Neurology.

Page Range: 8:17-9:12

8:17 Q. Okay. Are you on the Finance Committee
8:18 of Saltzer?
8:19 A. Yes.
8:20 Q. Does that committee still exist today?
8:21 A. Yes.
8:22 Q. How long have you been on the Finance
8:23 Committee?
8:24 A. I don't recall how many years. I've
8:25 been on Finance Committee intermittently since we
9: Page 9
9: 1 formed it originally.
9: 2 Q. Which was roughly when?
9: 3 A. I don't recall the exact year.
9: 4 Q. Okay. Are there any -- was it ten
9: 5 years ago or more?
9: 6 A. My guess would be 10 or 12 years.
9: 7 Q. Okay. Okay. Have you had any
9: 8 particular positions on the Finance Committee?
9: 9 A. I was chairman of Finance Committee for
9:10 several years and have -- then took a break
9:11 thereafter from committee positions. And now I'm
9:12 a member of Finance Committee at this time.

Page Range: 10:1-10:12

10: 1 Do you have any other administrative or
10: 2 committee roles at Saltzer?
10: 3 A. Yes.
10: 4 Q. And what are they?
10: 5 A. I'm on Executive Committee.
10: 6 Q. About how long have you been on
10: 7 Executive Committee?
10: 8 These questions seem to have a certain
10: 9 similarity, don't they?
10:10 A. For almost as long as I've been here.
10:11 I've been on Executive Committee for many years.
10:12 Not consistently so, but for many years.

Page Range: 11:1-11:8

11: 1 Q. Okay. When you say you've been on it
11: 2 for many years, can you just give me a sense of
11: 3 what -- what "many" means in this most recent --
11: 4 A. 15, 20 years.
11: 5 Q. Any other administrative or committee
11: 6 roles at Saltzer in recent years?
11: 7 A. I'm currently chairman of the IT
11: 8 Committee.

Page Range: 29:24-31:3

29:24 Q. BY MR. ETtinger: Okay. Let me show
29:25 you what's been previously marked as Exhibit 203,
30: Page 30
30: 1 and it's an E-mail from you to several people.
30: 2 A. Thank you.
30: 3 MR. ETtinger: This one I've got enough on.
30: 4 Q. BY MR. ETtinger: Are you ready?
30:5 A. Oh.
30: 6 Yes, sir. Go ahead.
30: 7 Q. Okay. So is this top E-mail in
30: 8 Exhibit 203 an E-mail that you sent?
30: 9 A. Yes.
30:10 Q. And in the first paragraph, you say,
30:11 about three lines down, ". . . I feel that we
30:12 should simply agree to disagree and abandon
30:13 further negotiations with them."
30:14 Do you see that?
30:15 A. Yes.

30:16 Q. And by "them," you meant St. Luke's,
30:17 correct?
30:18 A. Yes.
30:19 Q. And why did you think that as of June
30:20 of 2011?
30:21 A. I was afraid on a couple of fronts.
30:22 The first is there was beginning to be a lot of
30:23 dissension within the group over proceeding with
30:24 this deal, between the surgeons and the primary
30:25 care physicians.
31: Page 31
31: 1 And my other concern with this deal if
31: 2 it went forward is that I would somehow lose
31: 3 autonomy, independence.

Page Range: 31:4-31:10

31: 4 Q. You said in the third paragraph,
31: 5 " . . . I remain uninterested, as I have from day
31: 6 one, in giving Luke's any control of our employee
31: 7 base, nor would I currently be interested in
31: 8 selling them any of our ancillary services."
31: 9 Was that your view at the time?
31:10 A. Yes.

Page Range: 31:11-31:15

31:11 Q. Were there others in the group who
31:12 shared that view at the time?
31:13 A. I don't know of -- of their personal
31:14 views. There were others who spoke against it, as
31:15 I recall.

Page Range: 32:4-32:13

32: 4 Q. Do you recall others who disagreed with
32: 5 your views at that time?
32: 6 A. Yes.
32: 7 Q. And who was that?
32: 8 A. There were physicians within the group
32: 9 who were in favor of proceeding and moving forward
32:10 with the negotiations and the deal, so to speak.
32:11 Q. And who were those?
32:12 A. The physicians that come to mind were
32:13 Randy Page and John Kaiser.

Page Range: 32:14-32:24

32:14 Q. Okay. In the next-to-last paragraph,
32:15 you say, "Clearly an undesirable outcome for an
32:16 otherwise very strong and economically healthy
32:17 group."
32:18 Do you see that?
32:19 A. Yes.
32:20 Q. Was that accurate that the group was
32:21 very strong and economically healthy?
32:22 A. At this time?
32:23 Q. Yeah.
32:24 A. In my opinion, they were.

Page Range: 33:6-33:12

33: 6 Q. Between -- between June -- June of 2011
33: 7 and the time the transaction with St. Luke's
33: 8 occurred, did that change?
33: 9 A. The orthopedists left at that point.
33:10 And subsequent to them leaving, the remainder of
33:11 the surgeons left. I think that impacted the
33:12 group's economics.

Page Range: 41:4-41:5

41: 4 Q. Okay. I want to go back to
41: 5 Exhibit 203, if you can find that in your stack.

Page Range: 41:13-42:7

41:13 Q. In the first paragraph of this
41:14 E-mail -- this is the E-mail, you recall, where
41:15 you said we should agree to disagree and abandon
41:16 further negotiations. Do you remember that that
41:17 was the context of the E-mail?
41:18 A. Do I remember the context of --
41:19 Q. The context of the E-mail --
41:20 A. Oh, context.
41:21 Q. -- since we looked at it a few minutes
41:22 ago?
41:23 A. Yes.
41:24 Q. In that first paragraph, you say --
41:25 after talking about we should abandon further
42: Page 42

42: 1 negotiations, you say, "I feel particularly
42: 2 strongly about this given their recent responses
42: 3 to our administration this past Friday where they
42: 4 declined to allow us autonomy in patient referral
42: 5 patterns, et cetera."
42: 6 Do you see that?
42: 7 A. Yes.

Page Range: 44:8-44:11

44: 8 Q. Okay. So just -- you just don't
44: 9 remember the details behind your statement in the
44:10 E-mail?
44:11 A. That is correct.

Page Range: 44:13-45:1

44:13
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44:19 REDACTED
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45: Page 45
45: 1

Page Range: 45:3-45:6

45: 3
45: 4 REDACTED
45: 5
45: 6

Page Range: 47:2-47:4

47: 2
47: 3 REDACTED

47: 4

Page Range: 47:6-47:25 47: 6

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47:15 REDACTED

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Page Range: 54:6-54:13

54: 6 Q. Did you apply for privileges at -- at

54: 7 St. Luke's?

54: 8 A. Yes.

54: 9 Q. And what privileges -- did you seek

54:10 active staff privileges?

54:11 A. No.

54:12 Q. What level of privileges?

54:13 A. Courtesy.

Page Range: 54:16-55:2

54:16 When did you apply for privileges at

54:17 St. Luke's?

54:18 A. I don't recall the exact date. Our

54:19 business office has an employee that is in charge

54:20 of physician application for privileges. Beverly

54:21 Rich is her name, and she submitted the paperwork

54:22 on behalf of all the physicians for privileges to

54:23 St. Luke's at various hospitals.

54:24 Q. And was this the latter part of 2012?

54:25 A. I don't know when Beverly sent them in.

55: Page 55

55: 1 It would have been sometime after we formed the

55: 2 agreement with St. Luke's.

Page Range: 55:22-56:19

55:22 Q. And why did you apply for privileges at

55:23 that time?

55:24 A. Because I thought that I might want to

55:25 refer patients to St. Luke's facilities to do

56: Page 56

56: 1 certain procedures. It's just myelograms, or

56: 2 things along those lines, which we do in

56: 3 neurology, and privileges are required to order

56: 4 some of those procedures.

56: 5 Q. Where had you ordered those procedures

56: 6 previously?

56: 7 A. Depending upon preferences, primarily

56: 8 at -- well, I was going to say Mercy -- Saint

56: 9 Alphonsus.

56:10 Q. Okay. And is it because of -- why is

56:11 it that you came to the conclusion in 2012 that

56:12 you wanted to start, potentially, ordering those

56:13 procedures at St. Luke's?

56:14 A. It was just a matter of trying to

56:15 expand my privilege base. And then, secondarily,

56:16 it's my understanding that St. Luke's is going to

56:17 build a facility in Nampa, and I wanted to be able

56:18 to have privileges to order imaging and other

56:19 procedures there as well.

Page Range: 58:1-58:11

58: 1 Q. BY MR. ETTINGER: Let me show you

58: 2 Exhibit 733, Dr. Djernes, which is a series of

58: 3 E-mails in which you were involved in December of

58: 4 2012, Bates-numbered Saltzer177706 through 07.

58: 5 Take a look at it and I'll ask you some questions.

58: 6 A. Go ahead, please.

58: 7 Q. Is Exhibit 733 a series of E-mails in

58: 8 which you were involved in December of 2012 on the

58: 9 subject of contingency plans should the St. Luke's

58:10 deal be blocked?

58:11 A. Yes.

Page Range: 59:6-59:8

59: 6 Q. Do you recall the -- the subjects
59: 7 discussed in the E-mail?
59: 8 A. Yes, I recall the subject.

Page Range: 59:24-61:6

59:24 Q. Dr. McKinnon asked you "... what
59:25 the financial impact of the surgeons leaving
Page 60

60: 1 would/will have on us." Do you see that?

60: 2 A. Yes, I see that.

60: 3 Q. And you said, among other things, "We

60: 4 will rehire surgeons and eventually bridge the

60: 5 gap." Do you see that?

60: 6 A. Yes, I see that.

60: 7 Q. And did you make that statement to him?

60: 8 A. In the E-mail, I did.

60: 9 Q. Now, though, the E-mail is reporting to

60:10 others on what you said orally to Dr. McKinnon,

60:11 correct?

60:12 A. Yes. I don't know that my E-mail

60:13 exactly expressed the word-for-word conversation I

60:14 had with Dr. McKinnon.

60:15 Q. Do you have any basis for disputing the

60:16 accuracy of your E-mail, sitting here today?

60:17 A. I think this E-mail expresses the

60:18 sentiment of the conversation I had with

60:19 Dr. McKinnon.

60:20 Q. Accurately?

60:21 A. Within reasonable accuracy, yes.

60:22 Q. Do you recall it any differently,

60:23 sitting here today?

60:24 A. Well, again, Dr. McKinnon's concern was

60:25 the financial impact on the group of the surgeons

Page 61

61:1 leaving and how would we cover that.

61:2 And one of the things that I tried to

61:3 do to help him understand how we would cover that

61:4 is to explain to him that we would probably,

61:5 hopefully, rehire additional orthopedic surgeons

61:6 to fill the gap.

Page Range: 71:10-71:15

71:10 Q. If -- if the deal were unwound, would
71:11 you leave -- would you leave town, go practice in
71:12 some other place other than the Treasure Valley?
71:13 A. Maybe.
71:14 Q. Have you thought about that?
71:15 A. Yes.

Page Range: 71:16-71:24

71:16 Q. Okay. Where would you go?
71:17 A. I don't know.
71:18 Q. Okay. So how much time have you spent
71:19 thinking about that issue?
71:20 A. Occasionally, from time to time.
71:21 Q. Okay. Have you inquired anywhere in
71:22 some other communities as to what might be
71:23 available?
71:24 A. No.

Page Range: 71:25-72:21

71:25 Q. Okay. Does -- have you inquired of
72: Page 72
72: 1 anyone at St. Luke's as to how St. Luke's might
72: 2 help out if the court were to order Saltzer
72: 3 unwound?
72: 4 A. Have I inquired?
72: 5 Q. With anyone at St. Luke's as to how
72: 6 they might help out to -- to make that workable
72: 7 for Saltzer?
72: 8 A. No.
72: 9 Q. Do you know whether anyone at Saltzer
72:10 has done that?
72:11 A. I don't know.
72:12 Q. Have you asked whether anyone at
72:13 Saltzer has done that?
72:14 A. Not that I recall.
72:15 Q. Do you care whether anyone at Saltzer
72:16 has done that?
72:17 A. We at Saltzer Executive Committee have
72:18 talked about forming a committee to come up with
72:19 a contingency plan were this deal unwound. To
72:20 my knowledge, that committee has not been formed
72:21 yet.

Page Range: 77:22-77:23

77:22 Q. Okay. In your view, has Saltzer always
77:23 been a high-quality institution?

Page Range: 77:25-78:3

77:25 Q. BY MR. ETTINGER: Provide high-quality
78: Page 78
78: 1 care, generally?
78: 2 A. In my opinion, Saltzer provides high
78: 3 quality of -- of care.

Page Range: 78:20-78:23

78:20 Q. Okay. Has the IT Committee ever
78:21 undertaken any kind of comparison between the
78:22 eClinicalworks system and the Epic system?
78:23 A. To my knowledge, no.

Page Range: 79:20-79:23

79:20 Q. Okay. Okay. But with the exception of
79:21 the complaints that one would expect from a
79:22 certain generation, have Saltzer physicians been
79:23 pretty satisfied with eClinicalworks?

Page Range: 79:25

79:25 THE WITNESS: As far as I know.

Page Range: 80:10-80:20

80:10 Q. Okay. You said you're very busy. Is
80:11 your business down since the -- the surgeons have
80:12 left Saltzer?
80:13 A. I don't think it's down. It -- it's
80:14 different.
80:15 Q. Different how?
80:16 A. Immediately after the orthopedic
80:17 surgeons left, because a good share of my
80:18 referrals are procedural from the orthopedics,
80:19 when they left, it seemed that -- that I was no

80:20 longer receiving those referrals from them.

Page Range: 81:15-82:4

81:15 Q. Okay. Are you -- are there cases that
81:16 you turned down in the past that you're no longer
81:17 turning down --
81:18 A. Yes.
81:19 Q. -- because of the payment source?
81:20 A. Yes.
81:21 Q. What cases have you turned down in the
81:22 past?
81:23 A. Medicare, uninsured, TRICARE.
81:24 Q. Did you see Medicare patients at all in
81:25 the past?
82: Page 82
82: 1 A. A few on case-by-case basis.
82: 2 Q. But generally, you refused --
82: 3 A. Most neurologists in private practice
82: 4 in the state do not accept Medicaid.

Page Range: 83:10-83:12

83:10 So you ultimately voted for the
83:11 St. Luke's deal, did you not?
83:12 A. I did.

Page Range: 85:5-85:15

85: 5 Q. Okay. And one of your concerns in
85: 6 getting compensated more than St. Luke's initially
85: 7 offered was to have enough money to tide you over
85: 8 if worse came to worse after five years and you
85: 9 wanted to start a practice again, correct?
85:10 A. That is one of the things that I
85:11 considered at the time.
85:12 Q. Yeah. Okay. And you ultimately were
85:13 satisfied with the compensation that St. Luke's
85:14 offered?
85:15 A. Yes.

Page Range: 95:14-95:19

95:14 Q. While Saltzer was independent, was

95:15 there ever a discussion of Saltzer being in
95:16 financial jeopardy?
95:17 A. By "jeopardy," you mean . . .
95:18 Q. In poor financial condition?
95:19 A. Not that I recall.

Page Range: 97:23-98:6

97:23 Q. What was the nature of the dissension
97:24 between PCPs and specialists?
97:25 A. The nature of the dissension was not
98: Page 98
98: 1 exclusively between specialists and primary care
98: 2 doctors. It was primarily between the surgeons
98: 3 and the rest of the group.
98: 4 There was dissension, I -- I think,
98: 5 really over -- it boils down to Treasure Valley
98: 6 Hospital. That was the primary sticking point.

Page Range: 106:25-107:15

106:25 Q. Okay. All the others, were their
107: Page 107
107: 1 reasons --
107: 2 A. No, you said -- you asked me for one.
107: 3 Q. No, I said -- I said --
107: 4 A. Okay. Okay.
107: 5 Q. Any besides Dr. Andrew who gave a
107: 6 reason unrelated to the St. Luke's deal?
107: 7 A. It's difficult to answer with yes or no
107: 8 because the reasons that the surgeons told me were
107: 9 intertwined. There were call issues they were
107:10 concerned about. There were ability to expand
107:11 their practice they were concerned about. Some
107:12 wanted to remain independent. Some wanted to
107:13 align with Saint Alphonsus. There were different
107:14 answers. It's hard to put them all into one
107:15 nutshell.

Page Range: 109:4-109-10

109: 4 Q. BY MR. ETINGER: Let me put it this
109: 5 way. If there had been no St. Luke's transaction,
109: 6 do you have any specific reasons to believe that
109: 7 any of those surgeons would have left?

109: 8 A. I can't speak for them, but from my
109: 9 viewpoint, I can't think of a specific reason why
109:10 they would have.